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remedy lay upon the special agreement, remains an open question. But their increasing recognition of equitable principles, and the willingness with which they have freed themselves from the fetters of an over-technical system of pleading, would lead us to asseverate that, just as *Moses v. Macferlan* was, so it is, and will be considered sound law.

THE POWER OF A COUNTY TO TAX ITSELF FOR A STATE INSTITUTION TO BE LOCATED IN THAT COUNTY.

It is a fundamental principle, implied in all definitions of taxation, that taxes can be levied for public purposes only.[1] It is equally fundamental that the purpose of the tax shall be one which in an especial and peculiar manner pertains to the district upon which it is to be levied.[2] Where the purpose for which the tax is to be levied concerns the whole state, then the whole state should bear the burden of the tax; where the purpose concerns only some particular district of the state, then that district only should bear the tax.[3] These principles are universally accepted, because, as stated by Judge Cooley,[4] they are "as sound in morals as they are in law."

Counties, cities, towns, taxing districts, are all created by and under the control of the state.[5] This control, however, cannot be carried to such an extent as to transcend any of the fundamental principles just stated.[6] It therefore becomes important when levying a tax to determine whether the object reaches the whole state, or only some particular taxing district.

The Supreme Court of Arkansas in a recent case,[7] McCullough, C. J., and Wood, J., dissenting, held that a county could not

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[1] *Matter of Mayor, etc., of N. Y.*, 11 Johns. (N. Y.) 77, 80; *Van Horn v. People*, 46 Mich. 183, 185.

[2] *Hammet v. Philadelphia*, 65 Pa. St. 146, 151; *Steiner v. Sullivan*, 74 Minn. 498.

[3] *Steiner v. Sullivan, supra; Hutchinson v. Ozard Land Co.*, 57 Ark. 554. This principle is very clearly stated and explained in "Cooley on Taxation," 3d ed., vol. 1, p. 225, *et seq.*

[4] Cooley on Taxation, 3d ed., vol. 1, p. 227.

[5] *Commonwealth v. Moir*, 199 Pa. 534; *Bulkeley v. Williams*, 68 Conn. 131.

[6] *Lowell v. Boston*, 111 Mass. 454; *Matter of Jensen*, 44 N. Y. App. Div. 509.

[7] *State Agricultural School District No. 1 v. Craighead County*, 169 S. W. (Ark.) 964.

vote any part of its funds for the benefit of a state agricultural school, as a bonus to induce its location in that county.[8] The court based its decision upon the ground that the school was a state institution, and the citizens of the county in which it was located would acquire no greater rights to the use of the facilities of the school than those enjoyed by other counties. The fact that the school would be more accessible to the people of the county in which it was situated was held not to deprive the school of its character as a state institution.

A contrary decision has been reached in the other states where this question has been in issue, upholding the validity of an obligation entered into by a county for the purpose of securing within its limits a state institution.[9] These cases seem to lay down the sounder rule. The establishment of a public institution of general utility, such as an educational institution, in a particular locality is of a real benefit to the citizens of that locality in enabling them to make use of it with greater ease and at a less cost than others, who may have an equal right to make use of its facilities but who are more remotely situated. Moreover, real estate values would naturally increase, while the advantages to tradesmen are obvious. It is more in accord with principles of equality to permit those who receive the greater benefit to assume the greater burden, than to argue that because an institution belongs to the whole state, the whole state must be taxed equally without regard to locality.

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[8] Art. 7, sec. 28, of the Constitution of Arkansas, provides that the county court shall have exclusive jurisdiction of the disbursements of moneys for county purposes, and in every other case that may be held necessary for the internal improvement and local concerns of the respective counties.

[9] *Merrick v. Inhabitants of Amherst,* 12 Allen 500; *Burr et al. v. Carbondale,* 76 Ill. 455; *Hensley v. People,* 84 Ill. 544; *Marks v. Trustees,* 37 Ind. 155; *Briggs v. Johnson Co.,* 4 Dillon 148; *Co. of Livingston v. Darlington,* 101 U. S. 407. In *State of Wis. ex rel., etc., v. Haben, 22* Wis. 660, the following language is used: "The advantages incidentally accruing to the citizens of Oshkosh from the establishment of a state normal school at that place, though sufficient, with the consent of the legislature, to justify the citizens themselves . . . . in levying a tax to aid in the purchase of site or the erection of buildings. . . . The tax so levied must be with the consent of the citizens or proper city officers. The legislature has no power arbitrarily to impose such a tax. . . . This distinction does not seem to be well drawn. The question is wholly one of local concern. If the object is of that nature, then the legislature through its supreme power is able to impose such a tax. *Gordon v. Cornes et al.,* 47 N. Y. 608.